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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,226	02/28/2002	Dov Moran	M01/23	5080
7590 09/16/2004				
THE POLKINGHORNS 9003 FLORIN WAY UPPER MARLBORO, MD 20772				
EXAMINER PEYTON, TAMMARA R				
ART UNIT		PAPER NUMBER		
2182				

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,226

Applicant(s)

MORAN, DOV

Examiner

Tammara R Peyton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-18 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-18 and 26-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-18 and 26-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Matthews, III*, (US 2003/0027634).

As per claims 14-16, 32, 34, and 37, *Matthews, III* teaches a portable device (22', 22'' Figs.1-3) for device-to-device data transfer (pg. 2, [0021-0023], [0039]), comprising:

a non-volatile memory (memory, 32, Fig. 2) for storing the data,

a device interface (transceiver/antenna, 28, Fig. 2) for enabling the data to be transferred from the portable device and another portable device (22'', Fig.1);

wherein operation of both the portable device and said other portable device, with respect to the data, are restricted to data storage and transfer. (Abstract, pgs.2-6)

Matthews, III teaches a portable device (22') that allows the sharing of data (instructions, data records, etc.) between other portable devices (22''). *Matthews, III* teaches a portable device (22') comprising a memory (32), a transceiver/antenna (28),

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USB interface (34), processor (30), battery (40), power switch (36), and indicator, (38) that may be used as a miniature hard drive for transmitting and recording load instruction for a game application. The communication operation of the portable device and the other portable devices is restricted to data transfer and data storage of instructions or data records without the user's attention or knowledge. (pg. 1, [0008], pg. 3, [0035-0041], Fig. 5) However, *Matthews, III* does not expressly teach wherein each portable device (22) has a data storage area which is non-volatile memory; nonetheless, it would have been obvious to one of ordinary skill that *Matthews, III's* memory (32) is non-volatile because *Matthews, III* teaches wherein the memory (32) does not lose data already stored in the memory when the portable device (22) is in low power mode or when the portable device is switch off. Also, *Matthews, III* does not expressly teach wherein each portable device has a data storage area which consisting of flash memory, RAM, SD-RAM, or D-RAM, however, such data storage areas are well known in the art, thereby making use of one or all of these data storage areas obvious to one of ordinary skill.

As per claim 5, *Matthews, III* teaches wherein portable device (22) does not feature a user interface for communicating directly with a user. (Figs. 1-3)

As per claims 9-11 and 40, *Matthews, III* teaches wherein data transfer with said memory (32) is controlled according to at least one instructions ([0035]) and wherein

data stored on said memory is marked according to type (Fig. 6, [0042-0070], such that said at least one instruction selects data for transfer according to said type.

As per claim 12 and 13, in one embodiment, *Matthews, III* teaches wherein said portable device is connectable to a communication port of a computer (fixed location platform, 58, Fig. 4) wherein said device interface includes a physical connector to another communication port. [0031-0034]

As per claims 17, 33, 35, 38, and 40, *Matthews, III* teaches a portable device for data storage, comprising:

- a non-volatile memory (memory, 32, Fig. 2) for storing the data;
- a limited instruction set ([0035], Fig.5) for controlling transfer of the data for at least one of to or from said non-volatile memory;
- a logic (30) for executing at least one instruction from said limited instruction set;
- and
- a device interface (transceiver/antenna, 28, Fig. 2) for enabling the data to be transferred for at least one of the portable device from another portable device or from the portable device to said other portable device; wherein both the portable device and said other portable device lack an operating system.

Matthews, III teaches a portable device (22') that allows the sharing of data (instructions, data records, etc.) between other portable devices (22''). *Matthews, III*

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teaches wherein the portable device have an instruction set that limits the portable devices to data transfer and data storage of instructions or data records. The Office is taking the position that one of ordinary skill would readily recognize that the portable devices lack an operating system that could perform other instructional functions besides transferring and storing data between other portable devices or host devices.

As per claim 18, *Matthews, III* teaches a form of a user interface via power switch (36) wherein at least one command (power on or power off button) is initiated from the user. (Fig. 2)

As per claims 26, 36, and 39, *Matthews, III* teaches wherein a portable device for data storage for a user, comprising:

a non-volatile memory (memory, 32, Fig. 2) for storing the data and for storing a software application (instructions) for controlling data transfer with said non-volatile memory;

a logic (processor, 30) for executing said software application (instruction code);
and

a device interface for enabling the data to be transferred from the portable device directly to another portable device, wherein communication between said portable devices only occurs through respective device interfaces, and wherein neither the device nor said other portable device is capable of receiving an additional software application.

It is obvious to one of ordinary skill at the time the invention was made that *Matthews, III* teaches incorporating instruction software codes for controlling data transfer between other portable devices via the device communication interface. Further, nowhere in *Matthews, III* does it teach that the portable devices are capable of receiving new or additional instruction software code that will be executed by the processors of the portable devices.

As per claim 3, 4, 27-31, *Matthews, III* teaches incorporating logic including a processor for implementing at least one instruction stored in a data storage area, but does not expressly teach an additional memory component for storing said at least one instruction. However, it would have been obvious to one of ordinary skill that the data stored by *Matthews, III* would include an additional component, one part of the data store would be for storing the permanent instructions to be implemented by the logic to perform the data transfer mechanisms and another part of the data store would be used to receive and hold data that will be eventually transferred to another portable device. *Matthews, III* would have been motivated to include in the data store additional memory space that would include other instructions in order to expand the flexibility of the portable devices. Further, memory components consisting of a flash memory, RAM, SD-RAM, or D-RAM are well known in the art, thereby making use of one or all of these memory components obvious to one of ordinary skill.

As per claim 6, *Matthews, III* teaches further comprising a signaling device for transmitting a signal (via transceiver/antenna, 28, Fig. 2) to another portable device, said signal requesting transfer of data.

As per claims 7 and 8, *Matthews, III* wherein transfer of data is automatically initiated upon detection of said other portable device, according to said at least one instruction for controlling data transfer and such that automatic transfer is initiated only for at least one selected type of data.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammara Peyton whose telephone number is (703) 306-5508. The examiner can normally be reached between 6:30 - 4:00 from Monday to Thursday, (I am off every first Friday), and 6:30-3:00 every second Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin, can be reached on (703) 308-3301. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Mailed responses to this action should be sent to:

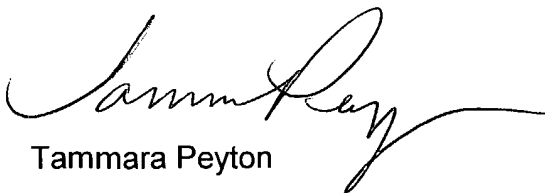
Commissioner of Patents and Trademarks
Washington, D.C. 20231.

Faxes for Official/formal (After Final) communications or for informal or draft communications (please label "PROPOSED" or "DRAFT") sent to:

(703) 872-9306

Hand-delivered responses should be brought to:

Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor
(Receptionist).

A handwritten signature in black ink, appearing to read 'Tammara Peyton', with a long, sweeping horizontal line extending to the right.

Tammara Peyton

September 13, 2004